

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MIKE HARRIS and JEFF DUNSTAN, )  
individually and on behalf of )  
a class of similarly situated )  
individuals, )  
                                )  
                                Plaintiffs, )  
vs.                               ) Case No. 1:11-5807  
                                )  
COMSCORE, INC., a Delaware )  
corporation, )  
                                )  
                                Defendant. )

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The 30(b)(6) deposition of COMSCORE, INC. by MICHAEL BROWN, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before JENNIFER L. WIESCH, CSR No. 84-4528, a Notary Public within and for the County of Will, State of Illinois, and a Certified Shorthand Reporter of said state, at 350 North LaSalle Street, Suite 1300, Chicago, Illinois, on the 15th day of August, A.D. 2012, at 9:36 a.m.

Job No: 26674

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1 A P P E A R A N C E S:

2 On behalf of Plaintiffs:

3 EDELSON McGUIRE, LLC

4 350 North LaSalle, Suite 1300

5 Chicago, Illinois 60654

6 BY: RAFEY S. BALABANIAN, ESQ.

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8 CHANDLER GIVENS, ESQ.

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10 BEN THOMASSEN, ESQ.

11 bthomassen@edelson.com

12

13 On behalf of Defendant:

14 QUINN EMANUEL URQUHART & SULLIVAN, LLP

15 500 West Madison Street, Suite 2450

16 Chicago, Illinois 60661

17 312-705-7400

18 BY: ANDREW SCHAPIRO, ESQ.

19 andyschapiro@quinnemanuel.com

20 ROBYN M. BOWLAND, ESQ.

21 robbynbowland@quinnemanuel.com

22

23 ALSO PRESENT:

24 MR. THOMAS S. CUSHING III,  
comScore Deputy General Counsel and  
Privacy Officer;

25 MR. AMIR MISSAGHI, Summer Associate.

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2                   (WHEREUPON, the witness was duly  
3                   sworn.)

4                   MR. BALABANIAN: This is the deposition and  
5                   oral examination of defendant comScore's witness  
6                   designated under Federal Rule of Civil Procedure  
7                   30(b) (6), pursuant to notice and continued by  
8                   agreement of the parties.

9                   MICHAEL BROWN,  
10                  called as a witness herein, having been first duly  
11                  sworn, was examined and testified as follows:

12                  EXAMINATION

13                  BY MR. BALABANIAN:

14                  Q. I'd like to go over a few ground rules,  
15                  Mr. Brown. My name is Rafey Balabanian. I am an  
16                  attorney for plaintiffs, Mike Harris and Jeff  
17                  Dunstan. I'm joined to my left with Ben Thomassen,  
18                  who's also an attorney for plaintiffs, and Chandler  
19                  Givens sitting next to Ben, another attorney, and  
20                  then my summer associate, Amir Missaghi.

21                  I just want to talk about a couple ground  
22                  rules before we get into the questioning and  
23                  whatnot. Have you ever been deposed before?

24                  A. I have.

25                  Q. Okay. So I need verbal answers from you.

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1                   MICHAEL BROWN

2                 A.    Panelists are people that have accepted  
3    and consented to install our software, take part of  
4    our research program.

5                 Q.    Okay. And when you say "our software,"  
6    who's "our"? Who are you referring to?

7                 A.    comScore's.

8                 Q.    comScore's software. Okay. Does  
9    comScore's software have any kind of technical name?

10                A.    Yes.

11                Q.    What is that name?

12                A.    Internally we refer to that code as the  
13    OSSProxy project. It's also sometimes referred to  
14    as CProxy. That's the two generic names within  
15    engineering.

16                Q.    You've mentioned you've been deposed  
17    before?

18                A.    Yes, sir.

19                Q.    Have you ever been a defendant in a  
20    lawsuit?

21                MR. SCHAPIRO: Personally or --

22                MR. BALABANIAN: Personally.

23    BY THE WITNESS:

24                A.    Yes.

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74

1 MICHAEL BROWN

2 Q. What other things?

3 A. Knowing that they were in existence from  
4 having conversations with internal attorneys.

5 MR. BALABANIAN: I want to take a break.

6 (WHEREUPON, a recess was had from  
7 10:59 a.m. to 11:11 a.m.)

8 BY MR. BALABANIAN:

9 Q. Mr. Brown, I just want to close out a  
10 couple things that we talked about, that we were  
11 talking about. And I think I want to cover the  
12 obvious, but you said that comScore designed  
13 OSSProxy, and you said TMRG did not, VoiceFive did  
14 not. I don't know if I asked you if  
15 CreativeKnowledge did or did not. Would you -- do  
16 you have an answer to that?

17 A. comScore designed OSSProxy.

18 Q. Solely?

19 A. Yes.

20 Q. Okay. So none of its subsidiaries  
21 designed it?

22 A. Correct.

23 Q. Okay. Do any of comScore's subsidiaries,  
24 the ones we just named or others, do they receive  
25 data from OSS -- gathered by OSSProxy?

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75

1                           MICHAEL BROWN

2       A.     Sir, we discussed multiple different  
3     companies, so --

4       Q.     Well, take them one by one.

5       A.     Thank you, sir.

6       Q.     That's easier.

7       A.     Appreciate that.

8       Q.     TMRG, Incorporated, do you know whether  
9     TMRG, Incorporated ever received panelist data? Let  
10    me withdraw that real quick. I want to clarify a  
11    couple of things. When I talk about panelists today  
12    going forward, I'm talking about software panelists,  
13    I'm not talking about survey panelists.

14      A.     Okay.

15      Q.     Okay?

16      A.     Thank you.

17      Q.     So when I say panelists, I'm talking  
18    about software panelists, those individuals who  
19    have --

20      A.     So from this point forward, until  
21    anything else changes, the definition of a panelist  
22    is panelists with comScore's software on them?

23      Q.     On their system, correct. Okay?

24      A.     Yes. Thank you for the clarification.

25      Q.     So with respect to TMRG, do you know

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76

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2       whether that company ever receives panelist data  
3       from OSSProxy?

4       A.     No.

5       Q.     What about VoiceFive, is your answer that  
6       you don't know or that, no, they don't receive  
7       panelist data?

8       A.     No, they don't receive panelist data.

9       Q.     Okay. How about VoiceFive Networks, do  
10      you know whether they receive panelist data from  
11      OSSProxy?

12      A.     The company does not.

13      Q.     Does not. What about CreativeKnowledge,  
14      Incorporated, same question?

15      A.     The company does not.

16      Q.     What about Knowledge Networks,  
17      Incorporated, same question?

18      A.     The company does not.

19      Q.     Sears Holding Management Corp., I think  
20      you said you don't know if that's a comScore  
21      subsidiary?

22      A.     I don't know about that.

23      Q.     Okay. So you don't know one way or  
24      another whether they would receive panelist data --

25      A.     That is correct.

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77

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2       Q. -- from OSSProxy? Okay.

3                   With respect to TMRG, do you know whether  
4       they deploy OSSProxy to potential panelists, whether  
5       they offer to deploy it to potential panelists?

6       A. I'm thinking, sir. Sorry, can I ask you  
7       to repeat the question again, sir?

8       Q. Sure.

9       A. I'm sorry.

10      Q. Why don't we rephrase it slightly. Might  
11     make it easier.

12      A. Thank you.

13      Q. Does comScore deploy OSSProxy directly to  
14     panelists, or is it done through the subsidiaries?

15      A. comScore deploys the software.

16      Q. Directly to its panelists?

17      A. Yes.

18      Q. Okay. So I said the word deploy. What's  
19     your understanding of that word?

20      A. My understanding of that word in the  
21     context of the question is that it validates terms  
22     of service that have been accepted, downloads the  
23     software, it installs the software, configures the  
24     software to operate properly on that machine,  
25     maintains that software.

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1 MICHAEL BROWN

2           Q.     Okay.   Right.   So let's take it one at a  
3           time.

4 MR. BALABANIAN: Actually, can you read back  
5 his answer.

(WHEREUPON, the record was read by  
the reporter.)

8 BY MR. BALABANIAN:

9           Q.     So with respect to confirming that a  
10          panelist has accepted the terms of service of  
11          OSSProxy, comScore directly confirms that a panelist  
12          has accepted the terms of service of OSSProxy;  
13          correct?

14 A. Yes.

15 Q. With respect to the installation of the  
16 software on the panelist's system, comScore is the  
17 company that is responsible for installing the  
18 software onto its panelists' systems; correct?

19 A. Yes.

20 Q. With respect to the download of the  
21 software, to the extent that's any different than  
22 the installation of the software, onto panelists'  
23 systems, comScore ensures that the software has been  
24 downloaded; correct?

25 A. Yes.

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79

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2                 Q.    With respect to configuring OSSProxy onto  
3                 panelists' systems, comScore's responsible for such  
4                 configurations; correct?

5                 A.    Yes.

6                 Q.    With respect to the maintenance of  
7                 OSSProxy on panelists' systems, comScore is  
8                 responsible for maintaining OSSProxy on those  
9                 systems; correct?

10                A.    Yes.

11                Q.    The subsidiaries that we went through,  
12                TMRG, VoiceFive Networks, CreativeKnowledge,  
13                Knowledge Networks, Incorporated, do they have any  
14                role based on your understanding of confirming that  
15                the terms of service have been accepted by panelists  
16                for OSSProxy?

17                A.    They do have a role.

18                Q.    What role?

19                A.    Within the panelists, we have multiple  
20                brands, and those -- the OSSProxy is installed  
21                respective to the brand that is associated to those  
22                entities.

23                Q.    Okay. But how does that answer my  
24                question with respect to them confirming a  
25                panelist's acceptance of OSSProxy?

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90

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2         A.     I'm unclear on that.

3         Q.     Okay. 88Circle, does that run -- did  
4     that -- does that run OSSProxy?

5         A.     Yes.

6         Q.     PremierOpinion, does that run OSSProxy?

7         A.     Yes.

8         Q.     KN Connection, does that run OSSProxy?

9         A.     Yes.

10        Q.     Impact Network Online, does that run  
11     OSSProxy?

12        A.     Yes.

13        Q.     So all of these various brands run the  
14     same software?

15        A.     Yes.

16        Q.     Okay. Which is all OSSProxy?

17        A.     Yes.

18        Q.     So with respect to the software itself  
19     spread across the various brands, the difference is  
20     the brand names?

21        A.     No.

22        Q.     Okay. There are other differences?

23        A.     Yes.

24        Q.     What are the differences between  
25     RelevantKnowledge -- OSSProxy that runs on --

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91

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2 withdrawn.

3                   What are the differences in OSSProxy as  
4 it relates to RelevantKnowledge and OpinionSquare?

5         A. There are none.

6         Q. There are none. What are the differences  
7 between RelevantKnowledge -- sorry.

8                   What are the differences between OSSProxy  
9 as it relates to RelevantKnowledge and  
10 PermissionResearch?

11        A. None.

12        Q. Well --

13        A. Just add a clarification to this, and I  
14 think I talked about this earlier in the deposition,  
15 if that's cool, acceptable.

16        Q. Go ahead.

17        A. When the software is installed, it's  
18 installed with respect to the respective brand. So,  
19 for example, the icon is consistent with the brand,  
20 the name is consistent with the brand --

21        Q. Okay.

22        A. -- so --

23        Q. So --

24        A. But the -- so the core software is the  
25 same, it's just there's brand specific --

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92

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2           Q.    Got it. So --

3           A.    I just want to add that in there when  
4 you're asking the question.

5           Q.    I understand, and it helped. Aside from  
6 your qualification, there are no other real  
7 differences amongst the brands?

8           A.    In regard to the software, that is true.

9           Q.    Correct. Okay.

10          THE WITNESS: Sir, do you mind, when it's  
11 convenient, it's not an urgent, I'd like to take a  
12 small break for -- visit the restroom.

13          MR. BALABANIAN: Then we'll take one.

14          THE WITNESS: Thank you so much.

15                   (WHEREUPON, a recess was had from

16                   11:38 a.m. to 11:44 a.m.)

17          BY MR. BALABANIAN:

18          Q.    I want to talk about the ways in which  
19 panelists download OSSProxy onto their systems.

20          Okay?

21          A.    Okay.

22          Q.    My understanding is there's -- there's  
23 basically two ways that a panelist can download  
24 software, the OSSProxy software, onto their system  
25 either directly from comScore or one of its

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127

1 MICHAEL BROWN

2 MR. SCHAPIRO: -- going to --

3 MR. BALABANIAN: -- him just yet.

4 MR. SCHAPIRO: Okay.

5 MR. BALABANIAN: I just gave it to him. I'm  
6 not asking him about the exhibit yet.

7 BY THE WITNESS:

8 A. I'm sorry, so --

9 BY MR. BALABANIAN:

Q. So wouldn't you say that the terms are more or less the same across the brands?

12 A. Yes.

16 BY MR. BALABANTIAN:

17 Q. I've handed you what's been marked as  
18 Brown Exhibit 5.

19 A. Okay.

Q. Could you mark it?

21 A. Yes.

22 Q. And take your time to review the  
23 document --

24 A. Thank you.

Q. -- to familiarize yourself with it,

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128

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2 please.

3         A. Thank you, sir.

4         Q. You've got to give me one second. These  
5 don't have page numbers on them, so bear with me.

6         A. Sure.

7         Q. Do you recognize Brown Exhibit 5,  
8 Mr. Brown?

9         A. I have a -- I know where this is -- come  
10 from.

11        Q. Okay. Can you tell me what you think it  
12 is?

13        A. This is an XML file containing the  
14 different pieces of the terms of service or URL  
15 agreement for multiple brands in multiple languages.

16        Q. Okay. And are these the terms of service  
17 that govern the installation of OSSProxy and  
18 MacMeter?

19        A. It is the terms of service that govern,  
20 yes.

21        Q. Okay. I'd like to just go through some  
22 of the points on it, because I'm very unclear on  
23 certain things.

24        A. Sure.

25        MR. SCHAPIRO: Objection.

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129

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2 BY MR. BALABANIAN:

3 Q. First of all, who would you say these  
4 terms of service are between?5 A. They're between the analysts and the  
6 brand they signed up for.7 Q. Okay. Do you know if comScore is  
8 referenced in these terms of service?

9 A. Do you mind if I take a look, sir?

10 Q. Sure. And I'll give you a hint. In the  
11 first paragraph, I know comScore's referenced, so  
12 there's one spot, but you can keep looking.13 A. There you go, so, yes, comScore is  
14 referenced.15 Q. And just so you know, I'm going to  
16 concentrate on the first six pages of this document.17 A. Thank you. I would struggle with the  
18 Chinese version.19 Q. As would I. I have my problems with the  
20 English version as well.21 Do you see in the second paragraph on the  
22 very first page, the sentence that says, "While  
23 participation in our program will allow us to send  
24 you periodic surveys and track information about  
25 your online activity, such as where you surf and" --

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1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF W I L L )

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5 I, JENNIFER L. WIESCH, do hereby certify:

6 That I am a duly qualified Certified

7 Shorthand Reporter, in and for the State of

8 Illinois, holder of certificate number 84-4528,

9 which is in full force and effect, and that I am

10 authorized to administer oaths and affirmations;

11 That the foregoing deposition testimony

12 of the herein named witness was taken before me at

13 the time and place herein set forth;

14 That prior to being examined, the witness

15 named in the foregoing deposition was duly sworn or

16 affirmed by me, to testify the truth, the whole

17 truth, and nothing but the truth;

18 That the testimony of the witness and all

19 objections made at the time of the examination were

20 recorded stenographically by me, and were thereafter

21 transcribed under my direction and supervision;

22 That the foregoing pages contain a full,

23 true and accurate record of the proceedings and

24 testimony to the best of my skill and ability;

25 That prior to the completion of the

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245

1 foregoing deposition, review of the transcript was  
2 requested.

3 I further certify that I am not a  
4 relative or employee or attorney or counsel of any  
5 of the parties, nor am I a relative or employee of  
6 such attorney or counsel, nor am I financially  
7 interested in the outcome of this action.

8

9 IN WITNESS WHEREOF, I have subscribed my  
10 name this 22nd day of August, 2012.

11

12

13 JENNIFER L. WIESCH, CSR No. 84-4528

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